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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,631	12/17/2001	Sonya S. Johnson	1391/1532	4072
28455	7590	06/29/2005	EXAMINER	
WRIGLEY & DREYFUS 28455 BRINKS HOFFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			CORBIN, ARTHUR L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Application Number: 10/024,631  
Filing Date: December 17, 2001  
Appellant(s): JOHNSON ET AL.

\*\*\*  
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 20, 2005.

(1) ***Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

(2) ***Related Appeals and Interferences***

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A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of the claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection in the brief is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

5,389,530	HILL	1-1995
5,487,902	ANDERSEN ET AL	1-1996
98/23165	GUDAS (WO)	6-1998

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-22, 25-27, 30-34 and 37 stand rejected under 35 U.S.C. 102(b). This rejection is set forth in a prior Office Action, mailed on July 22, 2004, paragraph No. 3.

Claims 28, 29, 35, 36 and 38 stand rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on July 22, 2004, paragraph No. 4.

#### **(10) Response to Argument**

The “picking and choosing” necessary to arrive at appellant’s invention from the Hill disclosure is not nearly as extensive as appellant suggests. The therapeutic chewing gums prepared in Hill include an emulsion coating, three components of which are: a therapeutic substance, many examples of which are medicaments (column 15, line 20 to column 16, line 5); an “other substance”; (column 16, lines 6-13); and a sweetening agent (column 17, lines 34-39). Sodium bicarbonate is disclosed as being one of eleven “other substances”, and sorbitol/xylitol are disclosed as being two of five sweetening agents. Thus, both sodium bicarbonate and sorbitol/xylitol are selected as species from two genres, both of which have a very limited number of species disclosed from which to choose.

Although no single example in Hill discloses each of appellant’s claimed components, as appellant argues, a genus of each component is disclosed as being part of a chewing gum coating. It then becomes merely a matter of selecting one species from a very limited number of species in each of Hill’s disclosed genres to arrive at appellant’s invention.

Appellant's contention that Hill fails to disclose the claimed amount of sodium bicarbonate (claims 2, 4, 18 and 31) is without merit. Table II of Hill discloses the use of 10% silica in the chewing gum coating, and silica and sodium bicarbonate are alternatively used as "other substances" (column 16, lines 6-13). Thus, if 10% silica is used, it follows that the same amount of one of the "other substances" would also be used at the same level. Since the coating is applied to the chewing gum in an amount of 6% (claim 11 of Hill), the amount of sodium bicarbonate would be 0.6% ( $6\% \times 10\%$ ), which is within appellant's claimed range (claims 2, 4, 18 and 31). Additionally, appellant's cooling agent (claim 9) is suggested by Hill as being present in the gum base (column 18, lines 33-34), i.e. peppermint or eucalyptus.

Appellant's claimed delivery rate (claim 37) is an inherent result of including sodium bicarbonate in the gum coating. Thus, if appellant's gum achieves a 30% or more delivery rate for the medicament, then so must the gum of Hill.

With regard to the obviousness rejection based on Hill in view of Andersen et al and Gudas et al, appellant's contentions are not convincing. Since Andersen et al suggests that caffeine and benzocaine may be used alternatively as medicament active agents in chewing gum, it is not necessary for Hill to disclose the use of caffeine in chewing gum. Appellant's reasoning, that the logic used in applying Andersen et al would result in a conclusion of obviously adding any compound to a composition to achieve the known benefit of that compound, is faulty. Only since Andersen et al suggest the use of caffeine as an alternative to benzocaine in the same environment, viz. chewing gum, does it become obvious to substitute caffeine for benzocaine in the

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chewing gum of Hill. Otherwise, the suggested substitution would not have been obvious.

Lastly, appellant's reliance upon In Arkley decision is inapposite to the rejections applied herein. In Arkley there was no specific suggestion to apply the chemical reaction to the precursor of the claimed compound. Arkley can be distinguished from the rejection over Hill because Hill does suggest using each of applicant's claimed components. The only selecting that must be done in Hill to arrive at this conclusion is a selection of sodium bicarbonate from a limited number of "other substances" (column 16, lines 6-13) and the selection of xylitol and/or sorbitol from a limited number of sweetening agents (column 17, lines 33-38). No other selection of specific components from Hill's disclosure is necessary since each of applicant's remaining components is claimed broadly, e.g. flavor, sweetening agent, medicament. Thus, all of the various permutations, which appellant believes must be considered from Hill in arriving at appellant's invention, have not been considered.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,



Glenn Caldarola  
Supervisory Patent Examiner  
Technology Center



ARTHUR L. CORBIN  
PRIMARY EXAMINER

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June 24, 2005

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Any inquiry concerning this communication from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can generally be reached on Monday--Friday from 10:30 to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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A.L. Corbin/dh  
June 25, 2005